

3.1 Purpose

During the Preassessment Phase, trustees make critical determinations that shape the remainder of the NRDA. Based on the circumstances of a given incident, trustees determine whether NRDA actions under OPA are justified and make preliminary determinations regarding the type of injury assessment and restoration actions that may be pursued.¹ Other matters considered during the Preassessment Phase may include data collection, opening the Administrative Record, coordination, and emergency restoration.

The Preassessment Phase process and its components are described below. An overview of the Preassessment Phase is provided in Exhibit 3-1.

The time period to complete the Preassessment Phase will vary from incident to incident. Although it is difficult to accurately prescribe a time standard to this component of a NRDA, past experience has found that many preassessment activities are completed within six months. Trustees should be prepared to accommodate the conduct of preassessment activities over a longer period of time where necessary.

3.2 Preassessment Phase Process

3.2.1 Notification

An NRDA begins with notification of an incident. According to the NCP, the On-Scene Coordinator (OSC) or lead response agency generally provides notification to the trustees.² After learning of the incident, the trustees should confirm that all the other known potentially affected trustees have been notified.

Trustees should consult with response agencies to determine the conditions for and the manner of notification of incidents. One option is to notify the trustees of every incident. However, each year thousands of oil spill incidents are reported to local response agencies and/or the National Response Center. Between the period 1973 and 1990, approximately 105,000 oil spills were reported and tracked by the USCG (Goodspeed, 1991) through its Marine Pollution Retrieval System, which includes only discharges located in coastal waters and the Great Lakes region. Of these discharges, 74% were less than 50 gallons, and 95% were less than 1,000 gallons.

¹ OPA regulations at § 990.40.

² NCP at § 300.320(a)(5).

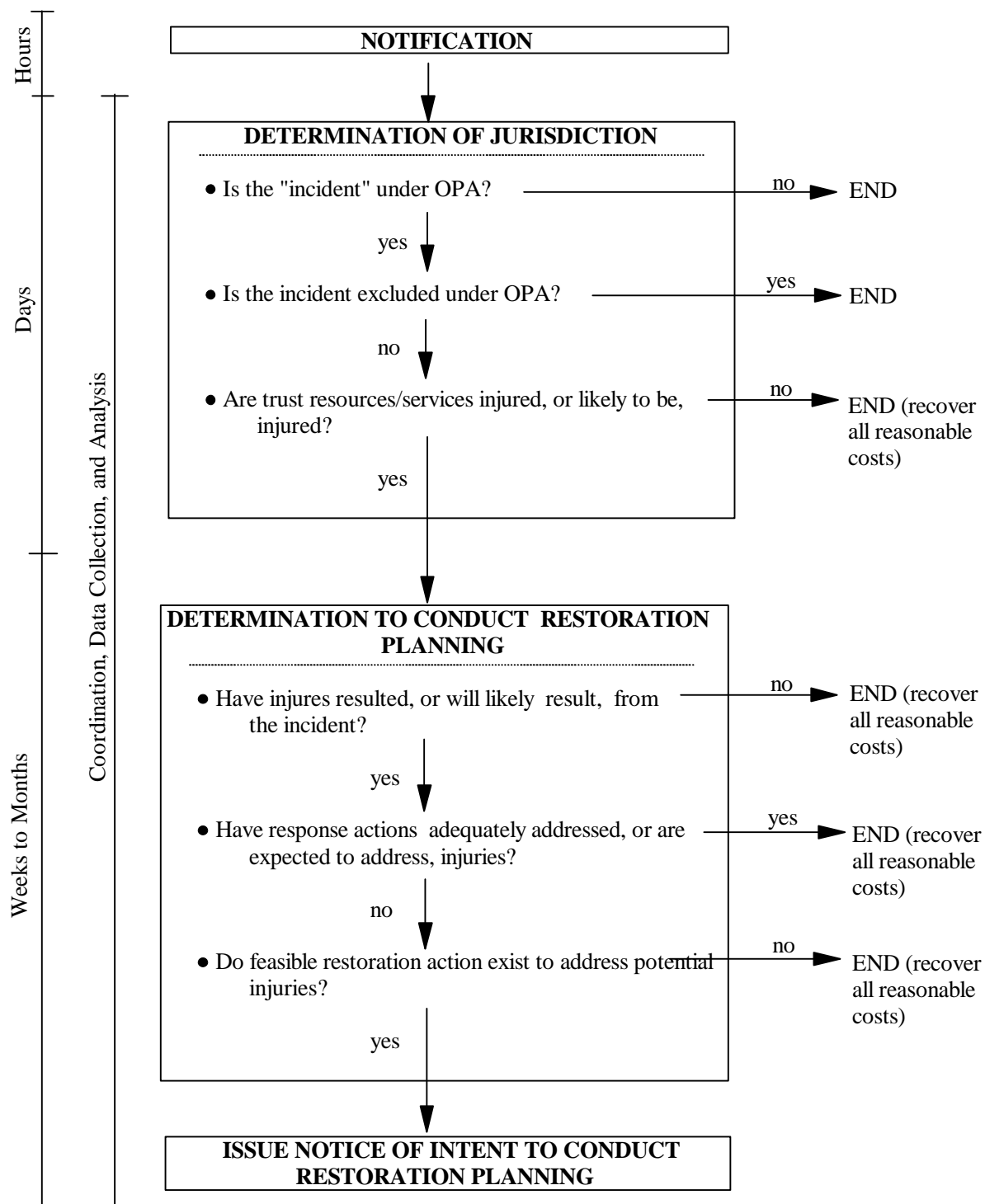


Exhibit 3-1 Preassessment Phase Decisionmaking Framework.

Although there is no fixed relationship between discharge size and likely damages, very small discharges do not routinely result in significant natural resource damages. Therefore, the trustees should establish some criteria for when they require notification of an incident. The most simple criterion is discharge size. As part of pre-incident planning, the trustees should review the histories of incidents in their areas and natural resources and develop notification criteria for response agencies.

At a minimum, trustees should consider including in Area Contingency Plans (ACPs):³

- Updated contact name and phone numbers;
- Criteria for when contacts should be notified;
- Guidance on whether notification should occur on a 24-hour basis or during normal working hours;
- How notification is made during off-hours, if different than above;
- How the other trustees are notified; and
- Backup measures to ensure other trustees are notified.

3.2.2 Determination of Jurisdiction

Before proceeding with an NRDA under OPA, trustees must make certain determinations. Initially, trustees must determine whether they have jurisdiction to proceed under OPA. Three conditions, which are outlined in the OPA regulations,⁴ must be met:

- An incident under OPA has occurred;
- The incident does not fall within exclusionary conditions set forth in § 1002(c) of OPA(33 U.S.C. 2702(c)); and
- Natural resources or services under the trusteeship of the trustee may have been, or are likely to be, injured as a result of the incident.

³ NCP at § 300.210(c).

⁴ OPA regulations at § 990.41(a).

Under the first condition, trustees must determine whether there has been a discharge, or substantial threat of a discharge, of oil. As for the second condition, trustees must determine whether the incident is not: permitted, or exceeds a permit, issued under Federal, State, or local law; from a public vessel; or from an onshore facility subject to the Trans-Alaska Pipeline Authority Act (43 U.S.C. 1651, *et seq.*). Frequently, the first two conditions are determined by the response agency; which should inform the trustees. The USCG, USEPA, or a State response agency may have already made the determination that OPA applies to the incident before notifying trustees.

The third condition is really intended to determine whether any natural resources under the stewardship of the trustees have been or are likely to be *affected* by the incident. This condition is necessarily determined by each trustee agency, based upon readily available information (e.g., maps, database, prior surveys, etc.). However, trustees may need to conduct some preliminary field work to confirm this condition is met.

The determination of jurisdiction may be made within hours. However, this determination should generally not take any longer than one to two days after receipt of adequate information about the incident.

If all of the conditions listed above are met, trustees may proceed with the Preassessment Phase. If any one of the conditions is not met, trustees may not take additional action under the OPA regulations, except action to finalize this jurisdictional determination. Trustees may recover all reasonable preassessment costs incurred up to this point provided that the first two conditions above were met, and actions were taken with the reasonable belief that natural resources or services under their trusteeship might have been affected as a result of the incident.⁵

A determination that OPA applies and that a trustee has jurisdiction to act under OPA may trigger *initiation* of the NRDA. Under such circumstances, trustees may request for preassessment funding using the USCG guidance on initiation funding procedures (U.S. Coast Guard, 1995).

⁵ OPA regulations at § 990.41(b).

3.2.3 Determination to Conduct Restoration Planning

Once jurisdiction has been established, trustees should then determine if restoration actions should be pursued.⁶ This determination depends on the following conditions, which are described below:

- Injuries have resulted, or are likely to result, from the incident;
- Response actions have not adequately addressed, or are not expected to adequately address, the injuries resulting from the incident; and
- Feasible primary and/or compensatory restoration actions exist to address the potential injuries.

3.2.3.1 Identifying Natural Resources and Services at Risk

Determining whether natural resources or services are or are likely to be injured requires that trustees consider the:

- Circumstances of the incident. Factors to consider include the:
 - ◆ location of the incident;
 - ◆ cause of the incident (e.g., collision, grounding, blowout, etc.);
 - ◆ condition of the vessel or facility;
 - ◆ environmental conditions contributing to the incident (e.g., climatic, weather, and water conditions, land-water configuration, etc.); and
 - ◆ status of the incident (e.g., actual or potential discharge, discrete/intermittent/continuous discharge, etc.);

⁶ OPA regulations at § 990.42(a).

- Characteristics of the discharge or substantial threat of the discharge. Factors to consider include:
 - ◆ the type of oil(s) discharged or threatened to be discharged, which may be described by its physical and chemical parameters;
 - ◆ date, time, and duration of the discharge or its threat;
 - ◆ extent of the discharge or its threat (e.g., volume, spatial and temporal boundaries, etc.); and
 - ◆ characteristics of the discharge or its threat that address its transport and fate (e.g., weathering, evaporation rates, dissolution, tendency for formation of emulsions, photo-oxidation rates, biodegradation potential, and toxicity);

- Characteristics of the natural resources. Factors to consider include:
 - ◆ the natural resources in the area of the incident;
 - ◆ the services they provide;
 - ◆ habitat and species types;
 - ◆ seasonal implications on sensitive life stages; and
 - ◆ unique ecological components (e.g., protected habitats, and endangered and threatened species; etc.); and

- Potential for injury. Factors to consider include:
 - ◆ potential for exposure;
 - ◆ pathways;
 - ◆ causal mechanisms; and
 - ◆ availability of assessment procedures and data to analyze these factors.

Trustees should consider injuries resulting from the incident as well as from actions taken to respond to the incident.

3.2.3.2 Effectiveness of Response Actions in Addressing Injury

Once trustees determine that natural resources and/or services have been or may be injured as a result of the incident, trustees should then determine whether these injuries are likely to be adequately addressed through response actions. This analysis should also consider whether restoration is feasible for injuries that occurred at the time of the incident, even if injured natural resources and services are expected to return to baseline as a result of response actions. If response actions are not expected to address residual natural resource and/or service injuries, trustees should determine whether there is a need and potential for restoration actions to address initial or residual injuries, and begin identifying these actions.

3.2.3.3 Early Identification of Potential Restoration Actions

Potential restoration actions need to be identified as early as practicable. Such identification helps to identify the purpose behind a decision to proceed with an NRDA that will lead to effective restoration actions, and provides the focus for designing injury assessment studies that will produce useful information on the type and scale of restoration needed. Trustees should refer to the Restoration Guidance Document listed in Appendix B as a start in identifying potential restoration options.

Considerations for early identification of restoration actions may include:

- Potential nature, degree, and spatial and temporal extent of injury, with or without restoration;
- Need and potential for restoration given the types of injuries;
- Potential type and scale of restoration;
- Extent of known information relevant to determining restoration needs;
- Time, money, and personnel required and available to obtain information relevant to restoration; and
- Requirements imposed by other applicable laws, regulations, and permits that would affect restoration.

The intent in the determination to conduct restoration planning is to define a conceptual model that can establish cause-effect associations between the incident and potential injuries resulting from the incident and define likely restoration alternatives. This effort does not require a formal risk assessment procedure, but should be based on the weight of evidence of data collected, as well as best professional judgment.

The correlation of chemical, toxicity, ecological, and/or biomarker data collected in the field or through the laboratory is the best means of establishing probable cause-effect associations. In the absence of such data or with incomplete data, the potential for injury may be determined relative to established standards or criteria or to scientifically sound thresholds using chemical data alone. It may also be possible to use the results of fate, transport, and effect models to identify possible associations between the discharged oil and potential injury.

Readily available information on the circumstances of an incident and likely natural resources and services at risk may be obtained from the on-scene response agencies. For most large discharges of oil under USCG jurisdiction, the NOAA Scientific Support Coordinator (SSC) will have information on the oil trajectory, short-term fate and behavior of the oil discharged, natural resources and services at risk, and response actions taken to-date. For discharges under USEPA jurisdiction, the Emergency Response Team (ERT) and/or Technical Assistance Team (TAT) can provide similar information. Resource managers who are assisting the OSC or designee in the response can provide on-scene information on the natural resources and services that are present and may be affected. For small incidents, the local resource manager or response representative is often the only official to investigate the incident. The trustees can contact specialists (experts) in oil discharge effects to provide their expertise on the likelihood of injury to natural resources and services, given the circumstances of the incident.

Other sources of information may also be available for additional scientific or technical needs. For instance, there are a number of publicly available computer models that can estimate the distribution and fate of discharged oil, including the Automated Data Inquiry for Oil Spills model, data for which can be provided by the SSC, the oil weathering model developed by Payne et al., 1983, and the Type A models developed under CERCLA. There are also on-line and published databases that may be of value, including the: AQUatic Toxicity Retrieval System (AQUIRE), a database of aquatic toxicity test results for 5,500 individual compounds compiled by the USEPA (Pilli et al., 1989); and several databases available through the Chemical Information System (CIS), such as Chemical Hazard Response Information System (CHRIS, 1984), originally developed by the USCG, and Oil and Hazardous Materials-Technical Assistance Data System originally developed by the USEPA (1981), among others. Finally, there is a range of other information in the literature that may also be useful (e.g., Long and Morgan, 1990).

If the conditions listed above are met (section 3.2.3), trustees may proceed with NRDA actions (i.e., conduct the Restoration Planning Phase, beginning with injury assessment). If the trustees decide to proceed with the NRDA, the trustees must issue a Notice of Intent to Conduct Restoration Planning, which is described below. If any one of the conditions is not met, trustees may not take additional NRDA action under the OPA regulations, except action to finalize this determination. However, trustees may recover all reasonable assessment costs incurred up to this point.⁷

The determination to conduct restoration planning may be issued within weeks or months after the incident. Trustees should seek to efficiently and effectively expedite the Preassessment Phase in order to avoid delays in restoration planning and the potential loss of ephemeral data on the incident.

⁷ OPA regulations at § 990.42(b).

3.2.4 Notice of Intent To Conduct Restoration Planning

If the trustees determine that there is a reasonable likelihood that injury has occurred as a result of the incident and feasible restoration actions exist that would address that injury, the trustees may proceed with the NRDA. If trustees decide to proceed, they must prepare a Notice of Intent to Conduct Restoration Planning,⁸ which documents the trustees' preassessment activities and the basis for the decision to proceed. Depending on information available at this stage, the notice may also include a description of the trustees' proposed strategy to assess injury and determine the type and scale of restoration. The notice should also indicate the location of and contact for the Administrative Record, which is required to be established concurrently with issuance of the notice (see the discussion in section 3.3.2 and Appendix I).

The contents of the notice may vary, but will typically discuss:⁹

- The facts of the incident (section 3.2.3.1(a-c));
- Trustee authority to proceed with the NRDA (OPA § 1006(c));
- Natural resources and/or services that are, or are likely to be, injured as a result of the incident (section 3.2.3.1(d));
- Potential restoration actions relevant to the expected injuries (section 3.2.3.3); and
- If determined at the time, potential assessment procedures to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services (sections 3.3.1.3 and 3.3.1.4).

The notice becomes part of the Administrative Record and must be made publicly available.¹⁰ The means by which the notice is made publicly available and whether public comments are solicited on the notice is left to the discretion of the trustees.

Trustees must also provide a copy of the notice to the known RPs and invite their participation in the conduct of restoration planning (as described in section 3.3.3.3).¹¹

⁸ OPA regulations at § 990.44(a).

⁹ OPA regulations at § 990.44(b).

¹⁰ OPA regulations at § 990.44(c).

¹¹ OPA regulations at § 990.44(d).

3.3 Other Components of the Preassessment Phase

3.3.1 Data Collection and Analysis

3.3.1.1 Purpose

Throughout the Preassessment Phase, the trustees may collect data for a range of needs and decisions. Data collection and analysis are driven by the conditions of the incident and information needs of the trustees, rather than a separate step in the process. The purpose of data collection and analysis in the Preassessment Phase is to facilitate the determination of whether natural resources and/or services have been injured by the incident and may require some form of restoration.

3.3.1.2 Type of Data Collection and Analysis

The type of data collection and analysis should be reasonable in light of the characteristics of the incident and the natural resources and/or services potentially affected. Information collected should be relevant to the NRDA process and the injuries and potential restoration actions. Because of time limitations, data collected and analyzed for preassessment decisionmaking should be readily available. Preassessment data collection and analysis should be completed in a timely fashion, otherwise such activities may not address preassessment needs and should be re-evaluated. Information from other sources, such as response agencies, should be used as much as possible to avoid duplication of efforts.

Types of data collection and analysis that may be needed include:

- Data reasonably expected to be necessary to make a determination of jurisdiction, or a determination to conduct restoration planning;
- Ephemeral data (i.e., information that may be lost if not collected immediately); and
- Data needed to design and implement anticipated assessment procedures.¹²

Trustees may refer to Appendices F-G for more details on the types of preassessment information available, citations to useful preliminary effects-related information, and Quality Assurance (QA) procedures.

¹² OPA regulations at § 990.43.

3.3.1.3 Standards for NRDA Procedures

The OPA regulations require that all NRDA procedures (i.e, protocols, methods, etc.), including those indicated for the Preassessment Phase, be tailored to the circumstances of the incident and the information needed to determine appropriate restoration for that incident. Acceptable procedures for an incident must meet certain standards,¹³ including:

- The procedures providing information of use in determining the type and scale of restoration appropriate for a particular injury;
- The additional cost of a more complex procedure being reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure; and
- The procedures being reliable and valid for the particular incident.

3.3.1.4 Available Assessment Procedures

It is difficult to identify in advance specific data collection and analysis procedures because of the unique conditions of each incident and the wide range of types of natural resources and services potentially affected. Therefore, the OPA regulations provide trustees with a range of procedures (from field or laboratory procedures, to model- or literature-based procedures, to a combination thereof).¹⁴ When practicable, preassessment procedures should be chosen that provide information of use in determining the most appropriate alternative for restoring the injury resulting from the incident. In addition, when selecting procedures, trustees should consider factors such as the time and cost to implement the procedure, nature, and spatial and temporal extent of injury and information needed to determine and quantify injury, possible restoration actions for expected injuries, and information needed to determine appropriate restoration. If more than one procedure providing the same type and quality of information is available, the most cost-effective procedure must be used.¹⁵ Further discussion of some of the procedures relevant to the Preassessment Phase is provided in Appendix E.

¹³ OPA regulations at § 990.27(a). Procedures include the Type A models in 43 CFR Part 11, Subpart D, and compensation formulas/schedules.

¹⁴ OPA regulations at § 990.27(b).

¹⁵ OPA regulations at § 990.27(c).

Procedures that may be of use in the Preassessment Phase, as well as other phases of the NRDA, can be found in various sources. Standard procedures (methods) are known for a wide range of chemical and ecological assessment techniques by the American Society for Testing and Materials, USEPA, U.S. Army Corps of Engineers, American Public Health Association, and USFWS (APHA, 1985; ASTM, 1987). For example, the USEPA has developed and validated rapid bioassessment protocols for benthic macroinvertebrates and fish in streams and rivers (Plafkin et al., 1989), an effective screening tool to initially determine and quantify injury. Appendix E includes discussions and references for biological and chemical study methods that may be useful in the Preassessment Phase.

3.3.2 Administrative Record

An Administrative Record facilitates the NRDA process by providing a central repository for materials relied upon by trustees in making final determinations about NRDA actions appropriate for an incident. Therefore, an Administrative Record should be opened after trustees decide to proceed with restoration planning, and concurrently with the development of the Notice of Intent to Conduct Restoration Planning. Trustees should refer to Appendix I for additional guidance on how to establish the Administrative Record.

The Administrative Record should contain adequate information to support review of the trustees' decisionmaking process. Depending upon the nature and extent of the incident, the Administrative Record should include information relied upon during the NRDA. Therefore, the Administrative Record should ordinarily include the Notice of Intent to Conduct Restoration Planning, draft and final restoration plans, and public comments, any relevant data, investigation reports, scientific studies, work plans, QA plans, and literature, and any final, executed written agreements among the participating trustees or with the RPs.¹⁶ Privileged documents and confidential settlement communications should not be placed in the Administrative Record.

Federal trustees should maintain the Administrative Record in a manner consistent with the Administrative Procedure Act (5 U.S.C. 551-59, 701-06).¹⁷ The Administrative Record should be limited to final documents when possible. Where no final document is available at the time of selection of restoration actions, draft documents may be included in the Administrative Record if they contain information not found in other documents in the record, but which is considered by the trustees in selecting a restoration action. Pre-decisional, deliberative internal agency memoranda should be treated as draft documents (and be excluded from the Administrative Record) unless relied upon in choosing restoration actions.

¹⁶ OPA regulations at § 990.45(a).

¹⁷ OPA regulations at § 990.45(b).

3.3.3 Coordination

Coordination among all persons involved by an incident is crucial to an efficient and effective NRDA. Coordination, in pre-incident planning and throughout the NRDA, can reduce time until restoration is implemented and ensure that NRDA costs are reasonable. A discussion of some additional aspects of coordination appears in Appendix J.

3.3.3.1 Coordination among Trustees

Trustees with shared or overlapping trusteeship are encouraged to coordinate their activities early in the Preassessment Phase.¹⁸ Coordination among trustees should avoid duplicative claims for damages, address shared natural resource concerns and result in more effective funding of NRDA work. When conducting joint assessments, trustees should designate a Lead Administrative Trustee (LAT) as soon as practicable after notification of an incident. The LAT should be selected by mutual agreement of the trustees. Depending upon the circumstances of the incident, there may be co-LATs or sequential LATs for different stages of the process. The LAT's responsibilities are mainly administrative, unless the trustees agree otherwise.

Trustees are encouraged to consider using agreements, such as MOUs (Appendix D), to structure NRDA activities. Trustees may act independently when there is a reasonable basis for dividing NRDA responsibilities, so long as there is no double recovery of damages. However, independent NRDA's may be less likely to achieve prompt restoration of injured natural resources and services.

3.3.3.2 Coordination with Response Agencies

It is probable that some Preassessment Phase activities may be conducted simultaneously with response activities. Under the OPA regulations, trustees must coordinate their activities with concurrent response agency operations.¹⁹ Any NRDA activities conducted in the area of the incident should be conducted consistent with the NCP, 40 CFR part 300, and any pre-incident plans or MOUs. Coordination among trustees and response agencies can result in reducing or eliminating natural resource and/or service injuries residual to the cleanup.

Under certain circumstances, trustees may be participating as part of the OSC's response organization as well as being members of the NRDA team. In these situations, trustees are encouraged to enter into an MOU during pre-incident planning that addresses the manner in which each trustee will satisfy the obligations entrusted to both response and NRDA activities.

¹⁸ OPA regulations at § 990.45(a).

¹⁹ OPA regulations at § 990.45(b).

3.3.3.3 Coordination with Responsible Parties

Active and early involvement of the RPs in the Preassessment Phase may eliminate some of the problems trustees have encountered immediately following an incident, such as lack of funding, personnel, and equipment. In addition, a joint trustee-RP NRDA may be more cost-effective and avoid duplicate studies. Therefore, the OPA regulations require the trustees to invite the RPs to participate in the NRDA.²⁰ Refer to Appendix K for an example RP invitation.

Determination of the timing and extent of RP participation is left to the judgment of the trustees on an incident-specific basis. While active RP involvement is the preferred means of conducting NRDAs, it may not be appropriate for trustees to delay NRDA activities while negotiating the terms of RP involvement.

Trustees should extend the invitation to participate to known RPs as soon as practicable, but not later than the delivery of the Notice of Intent to Conduct Restoration Planning. The invitation to participate must be in writing, and a written response by the RPs is required to confirm the desire to participate. Trustees and RPs should consider entering into binding MOA agreements (Appendix D) to facilitate their interactions and resolve any disputes during the NRDA. To maximize cost-effectiveness and cooperation, trustees and RPs should attempt to develop a set of agreed-upon facts concerning the incident and/or NRDA. For example, stipulated facts might concern the types of natural resources and services injured, extent of injury or most appropriate assessment procedures to determine injury and/or restoration needs, and how the results of the procedures used will be interpreted.

The scope of the participation by the RPs is determined by the trustees. For identified RPs, there are a number of factors that may assist trustees in making this determination, including the:

- Willingness of the RPs to participate in the NRDA, and provide funding for NRDA;
- Ability of the RPs to conduct NRDA activities in a technically sound and timely manner, and to be bound by the results of jointly agreed upon studies; and
- Degree of cooperation in response activities, and the actions of the RPs in prior NRDAs.

²⁰ OPA regulations at § 990.45(c).

However, the OPA regulations describe a minimum level of RP participation that consists of notice of trustee determinations and notice and opportunity to comment on documents or plans that significantly affect the nature and extent of the NRDA. Increased levels of participation by RPs may be developed at the mutual agreement of the trustees and RPs; however, final authority to make determinations regarding injury and restoration rests solely with the trustees. Final versions of submissions relating to the NRDA by RPs should be placed in the Administrative Record. Confidential communications between the trustees and RPs should not be included in the Administrative Record. Trustees may end participation by RPs who, during the conduct of the NRDA, interfere with the trustees' ability to fulfill their responsibilities.

Participating RPs may formally request use of assessment procedures other than those that have been selected by trustees as the most appropriate for the incident and injury of concern. RPs must identify specific alternate procedures, and demonstrate that they meet the requirements for acceptable assessment procedures as described above. In addition, because trustees will already have made a determination that a different procedure is appropriate, the RPs must agree not to challenge the results of the requested alternate procedure, and agree to fund the alternate procedure. Trustees may deny the request for alternate procedures on the grounds that they are not technically feasible or scientifically sound, are inconsistent with the standards established for assessment procedures described previously, or could not be completed in a reasonable time frame. Trustees must document the request and their response in the Administrative Record.

Trustees must describe or document in the Administrative Record and Restoration Plan the invitation for participation by the RPs, briefly describe or document the nature and extent of the RPs' participation, and briefly describe or document, if applicable, why the RPs' participation was terminated.

3.3.3.4 Coordination with the Public

A major goal of OPA is to involve the public in the restoration planning process. At a minimum, trustees must provide opportunities for public involvement after the trustees decide to develop a restoration plan. Trustees are encouraged to involve the public in the NRDA at any time earlier (i.e., Preassessment Phase), if such involvement is expected to enhance the trustees' decisionmaking or facilitate the restoration process.²¹

²¹ OPA regulations at § 990.45(d).

Depending upon the nature of the incident and expected NRDA actions, public comment may be solicited at various stages to ensure the best information base is available to the trustees. In highly complex incidents, or those incidents that are expected to involve multi-year efforts, trustees may have an opportunity to set up one or a series of public meetings to ensure opportunity for public input. Attendance should be encouraged by all persons that are involved, participating, or interested in the incident.

To the fullest extent practicable, trustees should involve the public to:

- Encourage a broad understanding of restoration and build trust, thus allowing for quicker recognition and support of the restoration process overall; and
- Incorporate public concern, providing for more effective restoration planning.

3.4 Emergency Restoration

The need for emergency restoration actions may occur while the trustees are conducting preassessment activities.²² Emergency restoration actions should be considered in situations where immediate action is necessary to minimize continuing or prevent additional injury. Although emergency restoration actions may be considered and implemented by trustees at any time throughout the NRDA, typically trustees begin evaluating the need for emergency restoration during the response phase.

If response actions are still underway, trustees, through their RRT member or designee, must coordinate with the OSC before taking any emergency restoration actions.²³ Any emergency restoration actions proposed by trustees should not interfere with on-going response actions. Trustees must explain to response agencies through the OSC prior to implementation of emergency restoration actions their reasons for believing that proposed emergency restoration actions will not interfere with on-going response actions.

Trustees must provide notice to identified RPs of any emergency restoration actions and, to the extent time permits, invite their participation in the conduct of those actions, consistent with the provisions of § 990.14(c) of the OPA regulations (section 3.3.3.3).²⁴

²² OPA regulations at § 990.26(a).

²³ OPA regulations at § 990.26(b).

²⁴ OPA regulations at § 990.26(c).

Although § 1012(j)(2) of OPA excludes emergency restoration actions from the standard public review and comment requirements, trustees must also provide notice to the public, to the extent practicable, of these planned emergency restoration actions.²⁵ Trustees may take emergency restoration actions that are feasible, likely to minimize continuing or prevent additional injury, and can be conducted at a cost that is not unreasonable. Trustees must also notify the public of the justification for, the nature and extent of, and the results of emergency restoration actions within a reasonable time following the actions. The means by which this notice is provided to the public is left to the discretion of the trustees.

Examples of emergency restoration actions trustees may undertake include:

- Placement of shore protection structures along a marsh shoreline where the vegetation was killed to minimize erosion of the shoreline during winter storms; and
- Closure of a fishery or hunting season to speed recovery through higher recruitment rates.

3.5 Preassessment Phase Costs

Trustees may recover the reasonable costs they incur to perform preassessment activities, provided that they have determined that such actions undertaken were premised on the likelihood of injury and the need for restoration.²⁶ Costs that the trustees are entitled to recover for activities conducted during the Preassessment Phase include, but are not limited to, costs associated with:

- Notification;
- Coordination with other trustees, response agencies, the RPs, and the public;
- Determination of jurisdiction;
- Determination to conduct restoration planning;
- Data collection and analysis;

²⁵ OPA regulations at § 990.26(d).

²⁶ OPA regulations at § 990.30.

- Report preparation; and
- Evaluating, planning, and implementing emergency restoration actions.

Categories of costs that are recoverable include:

- Staff time directly involved in the preassessment activities;
- Necessary travel to collect data and attend meetings;
- Expendable supplies used during the conduct of the above activities, such as film, field notebooks, sampling containers, etc.;
- Rental or leasing of aircraft, boats, large sampling gear, and equipment needed to conduct field surveys and sampling;
- Hiring of contractors to assist in data collection, analysis, consultation, and report preparation;
- Costs of laboratory analysis of samples;
- Rental of facilities for on-scene operations of the NRDA team and associated meetings; and
- Preparation and distribution of reports, announcements, public releases, etc.

Care should be taken not to include trustee costs that are related to response actions. It may be difficult under some conditions to draw a sharp line between response and NRDA activities early in the incident. However, trustees need to make this distinction.

Preassessment Phase costs should be fully documented. All personnel should keep detailed records of time and specific activities conducted. Because of the emergency conditions of an incident, normal procurement procedures oftentimes may need to be bypassed, and expenses are incurred. Careful and complete records must be kept. All necessary and reasonable costs incurred during the Preassessment Phase for initiation of the NRDA are eligible for immediate funding from the Oil Spill Liability Trust Fund under § 6002(b) of OPA. If the trustee costs are paid by the Fund, the guidelines published by the USCG (1995) should be followed.

Key components of these guidelines are:

- Expenditure documentation should be compiled on a daily basis. Fully itemize all expenditures, costs, and activities for which the trustees are requesting reimbursement. These daily reports should be completed on the date of activity;
- NRDA initiation activities should be documented as performed as a result of a specific incident. A unique Federal Project Number should be used on all documentation;
- Original forms of documentation is preferred, which should not be retyped even if it is handwritten;
- Key individuals need to be identified who can attest to the accuracy of the information and may be required to testify during cost recovery efforts;
- Trustees are encouraged to use the forms provided by the USCG for initiation expenses, though other formats are allowed;
- The Federal LAT needs to monitor the cumulative costs of initiation to ensure they do not exceed the ceiling provided by the applicable Request and Authorization for Initiation Funding; and
- Within thirty (30) calendar days of completion of the initiation of the NRDA, the Federal LAT needs to consolidate all trustee documentation and submit a request for reimbursement.